

1 HONORABLE TIMOTHY W. DORE  
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3 HEARING DATE: MONDAY, NOVEMBER 19, 2018  
4 HEARING TIME: 9:00 A.M.  
5 LOCATION: SEATTLE, COURTROOM 8106  
6 RESPONSE DATE: AT TIME OF HEARING  
7

8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10

11 In re  
12 SEATTLE PROTON CENTER, LLC<sup>1</sup>  
13 Debtors.

Lead Case No. 18-14380-TWD

DECLARATION OF JOSEPH M.  
RAICEVICH IN SUPPORT OF FIRST  
DAY MOTIONS

14 Joseph M. Raicevich declares as follows:

15 1. I am the Chief Financial Officer, Secretary and Treasurer of each Seattle Proton Center  
16 Holdings, Procure Seattle Holdings, LLC, and Seattle Proton Center, LLC (“Opco”). I have personal  
17 knowledge of the facts set forth herein. I make this Declaration in support of First Day Motions.  
18 Capitalized terms not defined in this Declaration have their meanings as ascribed in applicable First  
19 Day Motions.

**Cash Collateral**

20 2. As of August 31, 2018, Opco was indebted to the Senior Secured Lenders in the  
21 approximate amount of \$160,278,763 pursuant to the Amended Credit Agreement, a copy of which  
22 \_\_\_\_\_

23 <sup>1</sup> The Debtors are Seattle Proton Center, LLC, Bankruptcy Case No. 18-14380, Procure Seattle Holdings, LLC,  
Bankruptcy Case No. 18-14381, and Seattle Proton Center Holdings, Bankruptcy Case No. 18-14382.

1 (without Exhibits) is attached hereto as Exhibit A. The Senior Secured Debt is comprised of loans  
2 and extensions of credits as follows as of August 31, 2018: (i) bank loans under several loan facilities  
3 in the aggregate amount of \$146,291,234; (ii) hedge obligations in the amount of \$10,123,713; and  
4 (iii) aggregate obligations on account of a restructuring fee note, a restructuring expense note and an  
5 adequate protection note in the amount of \$3,863,816.

6       3.     The Senior Secured Debt is secured by a lien on all assets of Opcos and a pledge of all  
7 ownership interests pursuant to loan documents including, among other documents, (a) that certain  
8 Security Agreement, dated as of January 20, 2011 (a copy of which is attached hereto as Exhibit B)  
9 and that certain Assignment, Pledge and Security Agreement, dated as of August 24, 2010 (a copy of  
10 which is attached hereto as Exhibit C); and (b) as against the Ground Lease, that certain Leasehold  
11 Deed of Trust with Security Agreement, Assignment of Leases and Rents and Fixture Filing  
12 Statement, dated January 20, 2011, and as amended pursuant to that certain First Amendment to  
13 Leasehold Deed of Trust with Security Agreement, Assignment of Leases and Rents and Fixture  
14 Filing Statement, dated as of August 31, 2015, entered into between Opcos and the Agent. Copies of  
15 the corresponding UCC1 filings are attached hereto as Exhibit D.

16       4.     Opcos requires the immediate use of the cash proceeds of the Prepetition Collateral to  
17 continue uninterrupted operations for the benefit of its creditors and its estate, thereby avoiding  
18 immediate and irreparable harm to its business pending a final hearing. As part of their support of  
19 their support for and of the filing of these cases, the Senior Secured Lenders consent to the use of  
20 Cash Collateral. Opcos seeks to use Cash Collateral in accordance with the budget attached hereto as  
21 Exhibit E. Without use of Cash Collateral, Opcos will be unable to pay its ongoing operating  
22 expenses, including payroll, and will thus be unable to continue ongoing business operations.  
23

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1       5.     The Budget provides for a Professional Fund to pay the post-petition, allowed  
2 fees/costs of all professionals retained in this Chapter 11 case. All amounts provided for in the  
3 Budget for the Professional Fund shall be in addition to any prepetition retainers paid by Opcos to its  
4 professionals, and shall be deposited into an interest bearing trust account maintained by Bush  
5 Kornfeld, LLP, Opcos general bankruptcy counsel, for *pro rata* payment of allowed fees and costs of  
6 professionals, including any amounts payable pursuant to any other order entered by this Court  
7 authorizing interim periodic payment of professional fees, subject to final allowance of such fees and  
8 costs. To the extent the Professional Fund ultimately exceeds all allowed professional fees and costs  
9 of the estate, the remaining balance shall remain subject first to the security interests of the Senior  
10 Secured Lenders and returned to Opcos for its benefit.

11       6.     As part of their support of their support for and of the filing of these cases, the Senior  
12 Secured Lenders consent for an initial period of 60 (sixty) days commencing on the Petition Date, to  
13 the use of Cash Collateral.

14       **Wage Motion**

15       7.     Opcos currently has approximately 76 full-time Employees. Opcos has incurred costs  
16 and obligations with respect to the Employees that remain unpaid as of the Petition Date because they  
17 accrued, either in whole or in part, prior to the Petition Date.

18       8.     Opcos pays wages and salaries to the Employees on a semi-monthly basis, with the next  
19 payroll scheduled for November 21, 2018. Opcos aggregate gross payroll for all Employees, per  
20 payroll period, is approximately \$350,000. It is critical to the continuation of Opcos operations and its  
21 smooth transition into Chapter 11, that payments to Opcos Employees are made in a timely manner.  
22 No employee is owed more than \$12,475 for prepetition wages.

23  
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1           9.     Opcos sponsors benefit plans for the Employees, including medical, dental, vision,  
2     disability, and life insurance plans. Opcos pays approximately \$58,000 per month pursuant to a variety  
3     of contracts with third-party insurance administrators to cover the health and welfare benefits of its  
4     Employees, which amount includes both the Employee and Opcos (as employer) portions of the  
5     Benefit Plan Obligations. The Employee portions of the Benefit Plan Obligations are funds withheld  
6     from the Employees by Opcos and remitted to various third-party insurance administrators. Opcos also  
7     withholds approximately \$2,500 and \$1,000 respectively per pay period toward specific Employees'  
8     Flexible Spending Accounts and Health Savings Accounts. Opcos also deposits, on a quarterly basis, a  
9     set amount of funds into an HSA bank account for any Employee enrolled in an HSA insurance plan.  
10    Opcos quarterly HSA Deposits total approximately \$10,000.

11           10.    Opcos withholds approximately \$21,000 per pay period from the wages of its  
12    participating Employees' contributions towards a 401(k) plan. Opcos matches 50% of each  
13    participating Employee's 401(k) contribution amount, not to exceed 4% of a participating Employee's  
14    salary. Opcos gross 401(k) matching contribution is approximately \$10,000 per pay period

15           11.    In the ordinary course of its business, Opcos reimburses Employees for expenses  
16    incurred in the scope of their employment. Opcos also directly reimburses third-party credit card  
17    providers for expenses incurred by Employees. Opcos pays on average approximately \$10,000 per  
18    month in connection with expenses incurred by the Employees relating to business-related travel  
19    expenses, business meals, car rentals, and a variety of other miscellaneous business expenses. All of  
20    such expenses are incurred by Employees on Opcos behalf in connection with employment by Opcos  
21    and in reliance upon Opcos reimbursement policy.

22           12.    Opcos is required by law to withhold from the Employees' wages amounts related to  
23    federal income taxes, and social security and Medicare taxes and to remit the same to the appropriate

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1           taxing authorities. Opco is required to match from its own funds the social security and Medicare  
2           taxes and pay, based on a percentage of gross payroll, additional amounts of unemployment insurance  
3           and to remit the Payroll Taxes to the Taxing Authorities. On a semi-monthly basis, Opco remits an  
4           estimated total of \$27,000 including both Employer Payroll Taxes and Trust Funds Taxes to the  
5           Taxing Authorities.

6           **Utilities**

7           13. Prior to the Petition Date, the Utility Companies provided utility services to Opco as  
8           indicated on Exhibit A to the Utilities Motion. These services are crucial to Opco continued  
9           operations and Opco may suffer irreparable harm if the relief requested herein is not granted. Opco  
10          fully intends to timely pay all postpetition obligations owed to the Utility Companies.

11          14. As adequate assurance of future payment, Opco proposes to establish and fund a Utility  
12          Account in the amount of \$28,090. This amount is equal to approximately two weeks of service from  
13          all of Opco's utility providers. The Utility Account will serve as a cash security deposit to provide the  
14          Utility Providers adequate assurance of payment for Utility Services provided to Opco after the  
15          Petition Date.

16           **Cash Management**

17          15. Prior to the commencement of this Chapter 11 case, Opco maintained bank accounts  
18          used in its operations as follows:

Bank	Last 4 digits of Acct #	Purpose of Account
UMB Bank	6948	Operating Checking Account
UMB Bank	3695	Depository Lockbox
UMB Bank	6921	Zero-balance Payroll Account

22          16. Deposits are primarily made to account ending in 3695, the Lockbox Account, and are  
23          collectively swept to the account ending in 6948, the Operating Account, on a daily basis. The

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1 account ending in 6921 maintains a zero balance. Payroll transactions are debited from the Payroll  
2 Account, and on the same day, those funds are transferred from the Operating Account.

3       17. As of the Petition Date, Opcos also held accounts in its name that were established  
4 pursuant to the August 31, 2015 Amended and Restated Credit Agreement with its Senior Secured  
5 Lenders, but which accounts were not in use as of the Petition Date.

6                          UMB Bank      9811  
7                          UMB Bank      9814  
8                          UMB Bank      9815  
9                          UMB Bank      9819  
10                         UMB Bank      8110  
11                         UMB Bank      8111

12       18. In addition, as of the Petition Date, Opcos held UMB account 8112, a “Restricted Funds  
13 Account” established pursuant to that Amended and Restated Depositary and Account Control  
14 Agreement, dated as of August 31, 2015 between Opcos and Senior Secured Lenders. The Restricted  
15 Funds Account is controlled by the Agent for the Senior Secured Lenders. It was funded with  
16 previously restricted debt service reserve funds to be used as needed for the Adequate Protection Note  
17 provided to the Senior Secured Lenders in connection with a line of credit available to Opcos in  
18 connection with the August 31, 2015 Amended and Restated Credit Agreement. As of October 5,  
19 2018, the Restricted Funds Account held funds controlled by the Senior Secured Lenders in the  
20 amount of \$524,249.99. The Debtors’ Joint Prepackaged Plan of Reorganization provides for the  
21 Senior Secured Lenders’ release of these funds to Opcos upon the Effective Date.

22       19. Opcos Cash Management System is a vital part of its business operations. Requiring  
23 Opcos to establish a new cash management system would cause delay and produce disruption,  
particularly when Opcos is already subject to the usual operational adjustments attendant to a  
Chapter 11 filing.

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1           20.     Opco requests that it be authorized to use its prepetition accounts and prepetition  
2 checks and checking account without placing the label “debtor-in-possession” on each check. Use of  
3 existing accounts and checks will ensure that there is a smooth transition into Chapter 11 and minimal  
4 disruption of Opco’s operations.

5        21. It is my understanding that UMB Bank does not appear on the United States Trustee's  
6 List of Authorized Depositories For Bankruptcy Cases Filed in the Western District of Washington.  
7        Opco is a sophisticated, large company which depends on the continuity of its bank accounts to  
8 effectuate significant daily transactions as part of its normal course of business.

9           22. There is significant benefit to allowing Opco to retain its relationship with UMB Bank.  
10          Opco has a long-established and cooperative relationship with UMB Bank, which I believe is critical  
11          in order to operate in a Chapter 11 and reorganize successfully.

12           23. Leading up to the petition date, Opco worked diligently to pay all ordinary course  
13 creditors, vendors and suppliers current as of the petition date, in some cases also making  
14 prepayments.

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct.

DATED in Seattle, Washington, this 14<sup>th</sup> day of November, 2018.

/s/ Joseph M. Raicevich  
Joseph M. Raicevich

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